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Acting Secretary

August 18, 2003

Hon. Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals II
445 12 Street, SW
Washington, DC 20554

Re: Comments of the New York State Department of Public Service in the Matter of Petition of Verizon Telephone Companies for Forbearance from Current Pricing Rules for the Unbundled Network Element Platform; WC Docket No. 03-157.

Dear Secretary Dortch:

The New York State Department of Public Service ("NYDPS") submits these Comments in response to Verizon's July 1, 2003 Petition for Expedited Forbearance in the above-captioned proceeding. Verizon requests that the Commission forbear from applying its TELRIC pricing rules to the Unbundled Network Element Platform (UNE-P).¹ The reasons given are that "rather than being grounded in the incumbent's existing network, [TELRIC] is based on regulators' conceptions of the hypothetically most efficient technologies and network configuration," and that TELRIC discourages facilities-based investment because it "results in UNE rates that are well below what the ILEC, or any other real-world carrier, could match."² Verizon further states that "TELRIC functions as a 'black box': it lacks any objective criteria or standards upon which to base

¹ Verizon Petition For Expedited Forbearance at i.

² Id. @ 2.

rates and accordingly provides considerable latitude to set rates without regard to costs."³

The NYDPS urges the Commission to refrain from acting on the Petition. Forbearance is unnecessary under the immediate circumstances.⁴ The Chief of the Wireline Competition Bureau recently stated that the Commission will soon be undertaking a review of the TELRIC pricing methodology, and will shortly be releasing an NPRM.⁵ Likewise, Commissioner Martin recently indicated that a review of TELRIC will occur during the coming year.⁶ If the TELRIC methodology is in need of revision, certainly the best forum to address this is in a broader proceeding, rather than via a forbearance petition. Changing the Commission's regulatory regime through an extraordinary, truncated process, without full consideration of the factors underlying TELRIC and the potential consequences of making such a change would be wasteful in view of the more extensive examination that is reportedly not far down the road.⁷

Moreover, any consideration of forbearance by the Commission would be premature until the state proceedings mandated by the Triennial Order have been completed. The February 20, 2003 Triennial Review Press Release suggests that states will be required to evaluate whether UNE-P should be continued or phased out.⁸ It would be more rational to address

³ Id.

⁴ Any decision to forbear will not immediately apply to Verizon New York because under its existing incentive plan, it is required to continue to provide UNE-P at rates previously established under TELRIC until March 1, 2004. (Case 00-C-1945, Order Instituting Verizon Incentive Plan, New York State Public Service Commission, 215 PUR4th 460, 484, issued February 27, 2002.)

⁵ "Maher Highlights Key FCC Action Aside From 'Triennial Review,'" TR Daily, July 28, 2003.

⁶ "Martin Offers Outlook on FCC Proceedings," TR Daily, July 28, 2003.

⁷ TR Daily, supra notes 5, 6.

⁸ Commission Press Release, FCC Adopts New Rules for Network Unbundling Obligations of Incumbent Local Phone Carriers, February 20, 2003, at 2.

the continued availability of UNE-P before summarily altering UNE-P pricing.

For the foregoing reasons, the NYDPS respectfully urges the Commission to reject Verizon's petition for expedited forbearance from the TELRIC pricing rules for UNE-P.

Very truly yours,

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